

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:04-CR-32-1-F

UNITED STATES OF AMERICA

v.

JERMAINE DONNELL KORNEGAY,
Defendant.

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ORDER

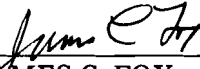
This matter is before the court on defendant's Motion to Reduce Sentence [DE-71] pursuant to 18 U.S.C. § 3582(c)(2), and § 8 of the Fair Sentencing Act of 2010, PL 111-220 (S 1789) (Aug. 3, 2010). Section 3582(c) permits a court to modify an imposed term of imprisonment in limited circumstances, including under subsection (2) when the Sentencing Commission has subsequently lowered the defendant's applicable guideline range. Advisory U.S.S.G. § 1B1.10 is the relevant policy statement providing guidance to the court when considering a motion under § 3582(c)(2). Section 1B1.10(c) specifies which amendments may be applied retroactively to reduce a defendant's sentence under § 3582(c)(2). If an amendment is not listed in § 1B1.10(c), it may not be applied retroactively on a § 3582(c)(2) motion. *See, e.g., United States v. Dunphy*, 551 F.3d 247, 249 n.2 (4th Cir.), *cert. denied*, ___ U.S. ___, 129 S. Ct. 2401 (2009); *cf. Dillon v. United States*, ___ U.S. ___, 130 S. Ct. 2683, 2688 (2010) ("When the Commission makes a Guidelines amendment retroactive, 18 U.S.C. 3582(c)(2) authorizes a district court to reduce an otherwise final sentence that is based on the amended provision") (emphasis added).

The 2010 Fair Sentencing Act amendments to the advisory sentencing guidelines are not among those listed in U.S.S.G. § 1B1.10(c), and there has been no suggestion by the Sentencing Commission that the Emergency Amendment, effective November 1, 2010, is or will be retroactive. Accordingly, Kornegay's Motion to Reduce Sentence [DE-71] pursuant to §

3582(c)(2) is DENIED without prejudice to renew his motion should the Commission later announce that § 8 of the Fair Sentencing Act of 2010 is to be applied retroactively.

SO ORDERED.

This the 8th day of November, 2010.



JAMES C. FOX
Senior United States District Judge